

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff(s),

v.

RUBEN PEREZ-CRUZ,

Defendant(s).

2:10-CR-575 JCM (VCF)

ORDER

Presently before the court is the government's motion to extend time (first request) to respond to petitioner's § 2255 petition (doc. # 156), and the government's motion to waive attorney-client privilege (doc. # 157).

Petitioner filed his motion to vacate under 28 U.S.C. § 2255 on September 12, 2012. (Doc. # 153). In a minute order, this court ordered the government to respond by October 16, 2012. (Doc. # 154). The government timely filed this motion to extend time to respond to the § 2255 petition until November 16, 2012. (Doc. # 156).

Local rule 6-1 permits an extension of time for good cause. The government cites the need to obtain from Michael L. Becker, Esq., a sworn affidavit. (*See id.*). Mr. Becker represented petitioner in the criminal case, and petitioner has made ineffective assistance of counsel allegations regarding the representation provided by Mr. Becker. (*See id.*). The court finds good cause.

The government also seeks a waiver of the attorney-client privilege between petitioner and Mr. Becker. It is well established that a habeas petitioner severs the attorney-client privilege when

1 the petitioner files a § 2255 petition asserting ineffective assistance of counsel. *Bittaker v.*
2 *Woodford*, 331 F.3d 715, 716-17 (9th Cir. 2003) ("It has long been the rule in the federal courts that,
3 where a habeas petitioner raises a claim of ineffective assistance of counsel, he waives the attorney-
4 client privilege as to all communications with his allegedly ineffective lawyer."). The court waives
5 the attorney-client privilege between petitioner and Mr. Becker.

6 Accordingly,

7 IT IS HEREBY ORDERED ADJUDGED AND DECREED that the government's motion
8 to extend time (first request) (doc. # 156) be, and the same hereby is, GRANTED.

9 IT IS FURTHER ORDERED ADJUDGED AND DECREED that the government's motion
10 to waive attorney-client privilege (doc. # 157) be, and the same hereby is, GRANTED.

11 DATED October 11, 2012.

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14 **UNITED STATES DISTRICT JUDGE**